

Federal Probation

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Perceptions of Probationers and Host
Agencies *G. Frederick Allen*
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The Presentence Investigation: An Old Saw
With New Teeth *Alvin W. Cohn*
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ing, Treatment, and Revocation:
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..... *Vincent Schiraldi*

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This Issue in Brief

Career Issues for Probation Officers.—Careers offer unique strains and frustrations. This is so for the work of the physician, the teacher—and the probation officer. While a probation officer's work can be interesting and rewarding, it presents a unique set of challenges. The hybrid role of the probation officer—which requires juggling investigative/enforcement tasks with counseling responsibilities—may cause conflict. Author Darrell K. Mills identifies six issues that the probation officer may face during a career. These issues, which have the potential to adversely affect job performance and motivation, require the officer's accommodation or resolution. The author provides strategies for coping with these issues.

Community Service Orders in Federal Probation: Perceptions of Probationers and Host Agencies.—To date, efforts to evaluate community service programs have focused on the views of the operators of these programs. An important element in program evaluation—the offenders' perspective—has been overlooked. Authors G. Frederick Allen and Harvey Treger used the theoretical perspectives of rehabilitation, deterrence, desert, and the justice model as the framework for a semi-structured, open-ended questionnaire for reviewing perceptions. The authors interviewed a sample of 73 probationers and program operators in 38 cooperating agencies. Findings revealed that community service is perceived by probationers and host agency operators as primarily a rehabilitative sanction rather than as the punishment that the courts may have intended.

The Presentence Investigation Report: An Old Saw With New Teeth.—The presentence investigation report has been tradition-bound in purpose and content almost from its inception well over 100 years ago. Designed to facilitate sentencing decision-making, it has also become utilitarian for a host of secondary users. After an

historical review of the construction of the presentence investigation report, authors Alvin W. Cohn and Michael M. Ferriter propose a new PSI model. It is one which facilitates primary and secondary decision-making, reduces labor intensity, and eliminates any debate over long versus short forms. The authors discuss the use of the model in Montana probation and assess its applicability and impact in criminal justice administration.

Considering Victim Impact—The Role of Probation.—Since its inception in a Fresno, California probation department in 1974, the victim

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Considering Victim Impact— The Role of Probation*

BY ROBERT C. WELLS

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AS A probation and parole officer in the 1970's, I contacted literally hundreds of victims in order to obtain their formal statement to the court on the issues of the defendant and final sentence. The victim represented one of a dozen or more individuals who needed to be contacted to produce a final presentence investigation. When advised by my secretary that a victim was on the line, my response all too often was, "It's about time." As a presentence investigator, I would listen to what was said by the victim and then summarize in a few sentences under the category, "Victim Statement." Years later, in evaluating that process objectively, I have to question how many of the statements I prepared in the '70's truly reflected the impact of the crime on the victim. As we enter the '90's, after over a decade of progress in the area of victims rights, I also ask myself if the process of obtaining the "victim impact statement" has really changed that much in many jurisdictions.

Since its formal inception in a probation department in Fresno County, California in 1974, the victim impact statement has evolved as the principal means by which crime victims can communicate to the criminal justice system the impact of crime on their lives and those of their families. It enables victims to become actively involved in the sentencing of their offenders. In its original conception, it presents a written, objective description of the medical, financial, and emotional injuries caused by the offender about to be sentenced. In the Federal justice system, and in many state jurisdictions as well, the victim impact statement is prepared by a probation officer as part of the "presentence investigation" (PSI) describing the background of both the offender and the criminal offense.

Since its introduction 15 years ago, the victim impact statement has enjoyed steady growth and acceptance in the criminal justice system. According to the 1988 NOVA Legislative Directory, 48

states have passed legislation allowing input by crime victims at sentencing, and in all but New Hampshire, that input includes the use of the victim impact statement. In many of these states, victim impact statements are a provision of larger, more comprehensive bills. Forty-five states have developed a victim bill of rights addressing such issues as:

- Information about available financial aid and social services
- Notification of case status and scheduling
- Protection from harassment and intimidation
- Separate waiting areas
- Speedy return of property held as evidence.

One element serving to bring about changes such as the ones just described has been the development of prosecutor and law enforcement-based victim assistance programs. For example, in the Federal justice system, the U.S. attorney for each of the 94 Federal court districts now has an LECC (Law Enforcement Coordinating Committee)/Victim Witness Coordinator. In addition, Federal law enforcement agencies have also assigned individuals to serve as victim/witness coordinators for each district. In preparing "Guidelines for Victim and Witness Assistance" for the U.S. Department of Justice, then Attorney General William French Smith established that an important role be played by each of the above in preparation of victim impact statements on a Federal level. Section III of the guidelines states, "The responsible official should ensure that the appropriate U.S. Probation Officer is fully advised of the information in his possession pertinent to preparation of the victim impact statement required by Rule 32(c)(2) of the Federal Rules of Criminal Procedure so that the report will fully reflect the effects of the crime upon victims as well as the appropriateness and amount of restitution." To accomplish the aims set out by guidelines, many U.S. attorneys offices now provide their victims with forms to aid in the completion of impact statements.

Today many state and local jurisdictions have joined in the practice of having impact statements

*For information on LECCs (Law Enforcement Coordinating Committees) or for examples of impact statements in use by United States attorneys offices, call the Executive Office for the United States Attorney at (202) 514-3276 or FTS 514-3276.

prepared directly by the victims themselves, often by completion of some type of "standard form." There are now perhaps hundreds of "models" for such forms in use throughout the country. Often the origin of the forms is unknown. Moreover, despite the fact that impact statements have been part of most state and Federal justice systems for over 5 years, surprisingly little formal research or analysis has been conducted on their effectiveness. Fundamental questions have not been addressed: Who should prepare impact statements? Should they be submitted directly by victims? When should information as to the impact of the crime on the victim be obtained? What instruments (forms) should be completed by victims? What should be the design of such instruments? Even the most elementary question has not been examined—What is the purpose of the victim impact statement to the victim, to the law enforcement officer, to the prosecutor, to the judge, to the parole official?

Nonetheless, since 1974, some information has been learned about the victim impact statement. Most criminal justice practitioners would agree that such statement is the principle means for communicating with the system about issues such as financial loss and emotional impact. The victim impact statement also helps to ensure that restitution amounts are accurate and reflect the total loss sustained by the victim. Further, it may influence final sentence imposed by the court. But perhaps its most potentially important benefit is the one most often overlooked. *It may promote psychological recovery of victims.* Just as talking about crime is good therapy, writing about the crime may assist many victims in behaviorally resolving the crime. Giving victims the opportunity to tell how they were affected by the crime also sends victims the supportive message that the criminal justice system cares about what happened to them. The challenge to the justice system is to see that victims understand the process of preparing a complete impact statement and that they are provided with the tools that enable them to do so.

Probation officers play an important role in ensuring that victims receive the benefits that come from preparing a complete victim impact statement. In effectively fulfilling that role, probation officers need to, first, let victims know that the opportunity to provide such a statement exists. Victims rights are like offender rights were before the *Miranda* decision—if I don't know that I have rights under the law, I don't!

Second, officers need to let victims know what

procedures and policies are in place regarding the administration of a victim impact statement program. Do they simply send a letter to the judge? Do they complete a "victim impact statement form" sent by the prosecutor, victim advocate, or probation department? Do they talk directly to probation about the impact?

Third, the probation officer needs to encourage victims' participation, letting them know that the system will consider impact and that their information can make a difference. Fourth, the officer needs to let victims know that the officer will assist them in preparing their statements and answer any of their questions or concerns about the process.

Next, probation officers need to examine local policies in order to help eliminate additional roadblocks to the effective use of victim impact statements. For instance, there may be little or no opportunity for victim input into sentencing decisions in many jurisdictions when no presentence investigation is ordered by the court. Even if provisions for victim input exist, the status of the victim impact statement may vary by jurisdiction or judge. Moreover, gaps and duplication of services in the administration of a local impact statement program may exist. With thousands of law enforcement-based victim assistance programs in the country, this can be a problem. Organizations dealing with victims need to meet regularly and effectively define the role that each plays to ensure that such problems are minimized. On a Federal level, the Law Enforcement Coordinating Committee (LECC) sponsored by the U.S. attorney for each district is designed to assist with such an evaluation.

Another problem is that victims may not want to participate in the criminal justice process, preferring to forget about the crime and its impact on their lives or to avoid the problems associated with further involvement with the criminal justice system. The challenge here is for the probation officer not to cause or further contribute to such feelings by failing to adequately explain the purpose and benefits of the victim impact statement. If probation and parole staff members have not been trained to effectively administer the victim impact statement, such challenge may be difficult to meet.

Perhaps the greatest challenge in examining the effectiveness of programs for victim impact is to look at the instruments used to capture the impact of the crime on the victim. The instruments, forms, and cover letters used to obtain victim impact may not be effective. Departments that

administer written victim impact statements should ask the following questions:

- *Do the forms (instruments) match victim and crime?* Or, are they "one size fits all" types of impact statements? The victim of a white collar fraud case who receives an impact statement that asks for information concerning physical injuries may ask himself, "Doesn't the probation office even know what happened to me?" Development of separate forms and cover letters for violent and white collar crimes should be considered.

- *Do the forms enable the victim to express impact?* The victim can only express how he was affected by the crime if he is allowed to do so. Victims want to tell how they were affected; they need to be provided with instruments that let them do just that. The forms often consider the emotional impact of the crime at the very end, after what is often a lengthy series of questions about physical injury and financial loss. A homicide survivor would be insulted by an impact statement instrument which finally got around to asking the effects of the crime after two pages of questions dealing with issues such as financial loss and which only provided three blank lines for a response. The impact form should encourage the expression of impact by providing adequate space for victims to express how they and members of their families are being affected by the crime. Impact statements should *start*, not *finish*, with a simple, open-ended question such as, "How are you and members of your family being affected by this crime?" Further, that question should be followed, not with three lines with which to respond, but with a page of lines encouraging additional sheets if victims choose to use them.

Some impact statement forms subject victims to a type of behavioral interrogation by asking a series of questions such as: How did this crime affect your lifestyle? How did this crime affect your family relationship? Has your opinion of yourself changed since the crime? These questions are usually followed by, again, only three lines with which to respond. Any victim advocate would be upset with a detective or a prosecutor who asked a victim, "Tell me everything you know about this case in 25 words or less." Victim advocates' response to such a situation would be something like, "Let them talk. Give them the space to tell you." Cover letters need to ask the victim to consider such questions as those listed above as part of the process of documenting the emotional impact of the crime.

- *Do the forms or cover letters use terms that*

may be unfamiliar to many victims? Like many professionals, criminal justice practitioners have a professional language all their own. They forget that the general public is probably unfamiliar with the meaning of terms such as "restitution," "deposition," "preliminary hearing," or "crime compensation." If such terms are used, they need to be defined so that the victim understands them. Such step helps to "de-mystify" the justice system, and victims feel better about a system that they can understand.

Victims will be more likely to respond with information when given forms and cover letters that they understand and that they perceive to be sensitive to *their* needs. Inappropriate are impersonal letters that begin with sentences such as: "It has been determined that you are a victim of crime." "We have been advised that you are a victim of crime." "We have been advised that a member of your family is deceased as a result of a crime." In developing such letters it is probably a good idea to forget the government style manual and to look at such letters as victims look at them.

Finally, taking the time to review other forms being used as victim impact statements is worthwhile and may result in helpful ideas. For example, one form asks the question, "Have you applied for Crimes Compensation?" Even though such question would yield a valuable piece of information, most forms reviewed—some of which are adopted statewide—fail to ask this question. Another novel approach is to have separate impact and financial statements.

The suggested changes and modifications to forms and letters will likely have two results. First, victims will probably return a much higher percentage of the statements. The reason for such response is simple: The victims are being given something that *they* value—the ability to tell the system how they are being impacted by their victimization. When victims' needs are met first, they will be more likely to assist the criminal justice system by responding with information necessary to meet the needs of the system—information about financial loss needed to accurately determine the appropriate amount of restitution. Second, victims may request a second statement to fill out. This request will usually be preceded by a statement such as, "When I was filling out the form, I got so angry that I said things that I really don't want to say to the court. May I fill out another form?" The new forms may just assist many victims to behaviorally resolve the impact of the crime.

Probation professionals can shape how "victim impact" is defined in the community. To do that, they need to examine their methods for obtaining victim impact, coordinate the process in the community with victim assistance programs, and initiate staff training on issues surrounding criminal

victimization. If officers do so, they will enable victims to provide the justice system with information which more completely represents the actual impact of crime on victims—information which can make a difference.